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Resolving Litigation to Accomplish O&M Dredging in the Snake River

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Resolving Litigation to Accomplish O&M Dredging in the Snake River

Topics

- Program/Project Description
- Progression of Environmental Compliance Documentation (& Litigation)
- Factors Affecting the Success of Compliance Efforts
- Terms of Settlement Agreement
- Take-Away Points

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Program/Project Description

Columbia/Snake River Navigation System

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Lower Monumental Lock and

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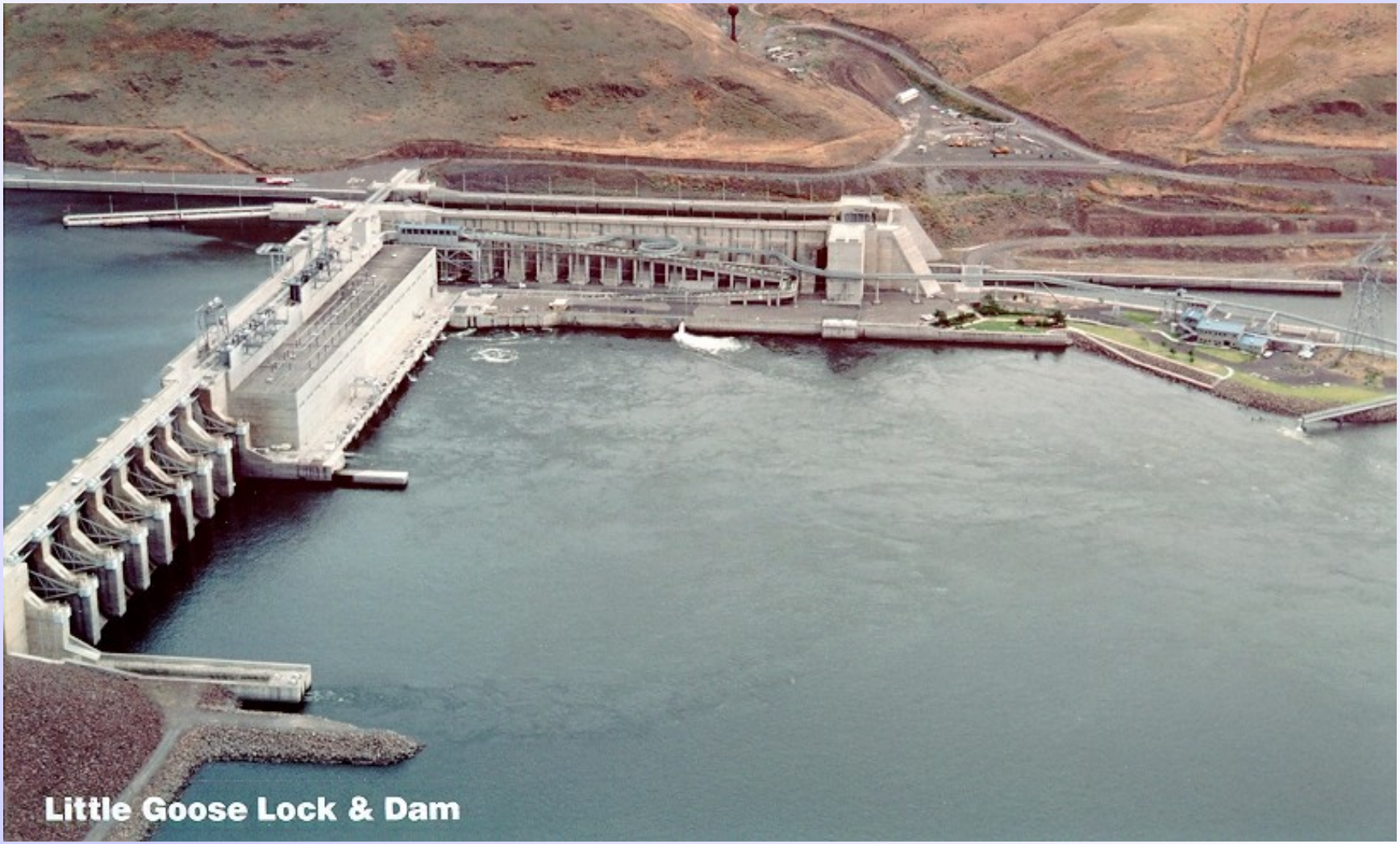

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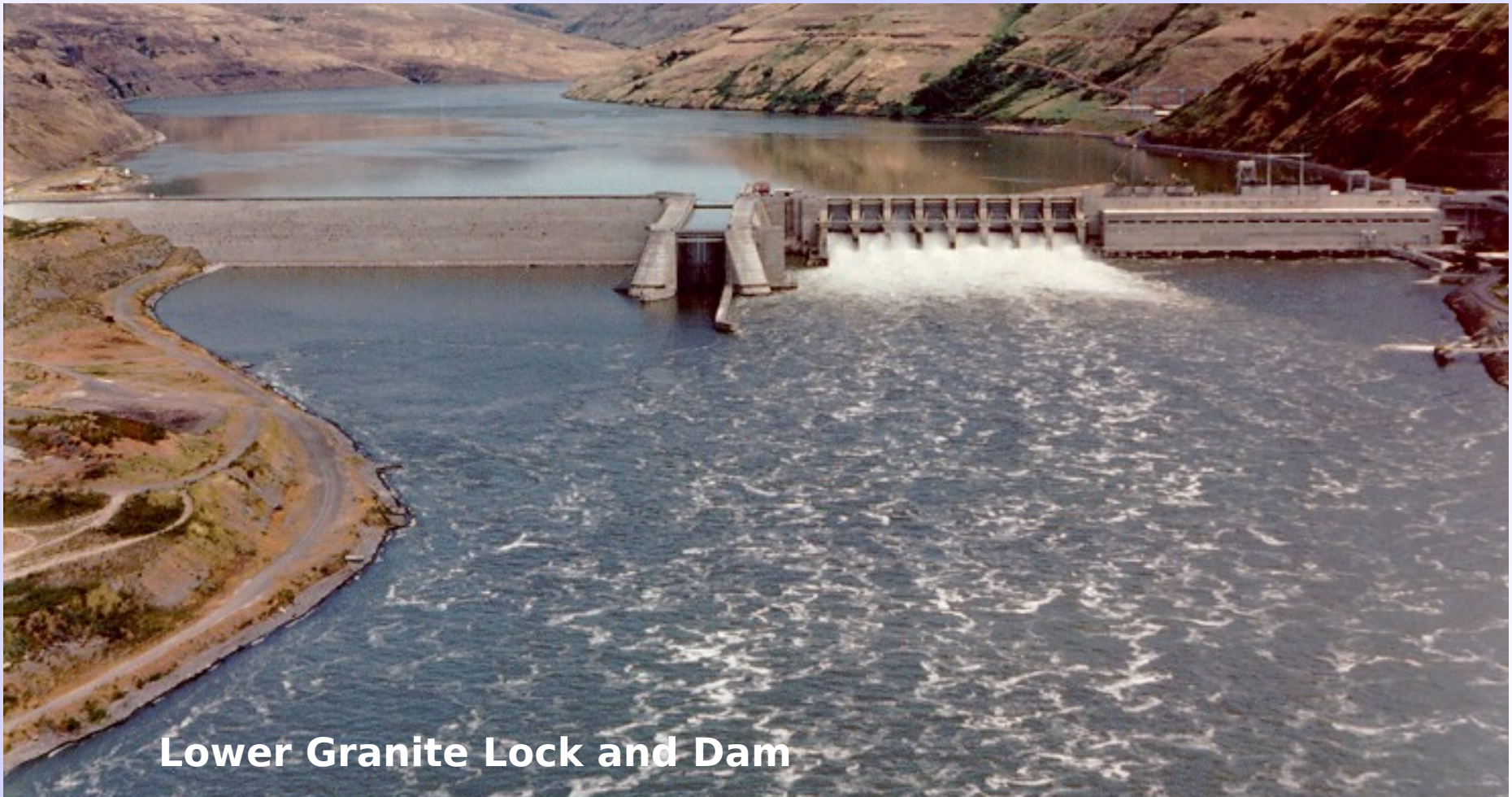

Lower Granite Lock and Dam

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Program/Project Description (Cont'd)

- In 1998, NWW began to prepare a combined Dredged Material Management Plan/Environmental Impact Statement (DMMP/EIS) for the 5 navigation projects within NWW District boundaries
- Planned as a programmatic document to cover a 20-year period
- Site specific information to be presented in "tier-off" environmental compliance documents
- Because of channel conditions, site-specific information for the first tier-off action was included as an appendix to the Programmatic DMMP/EIS.

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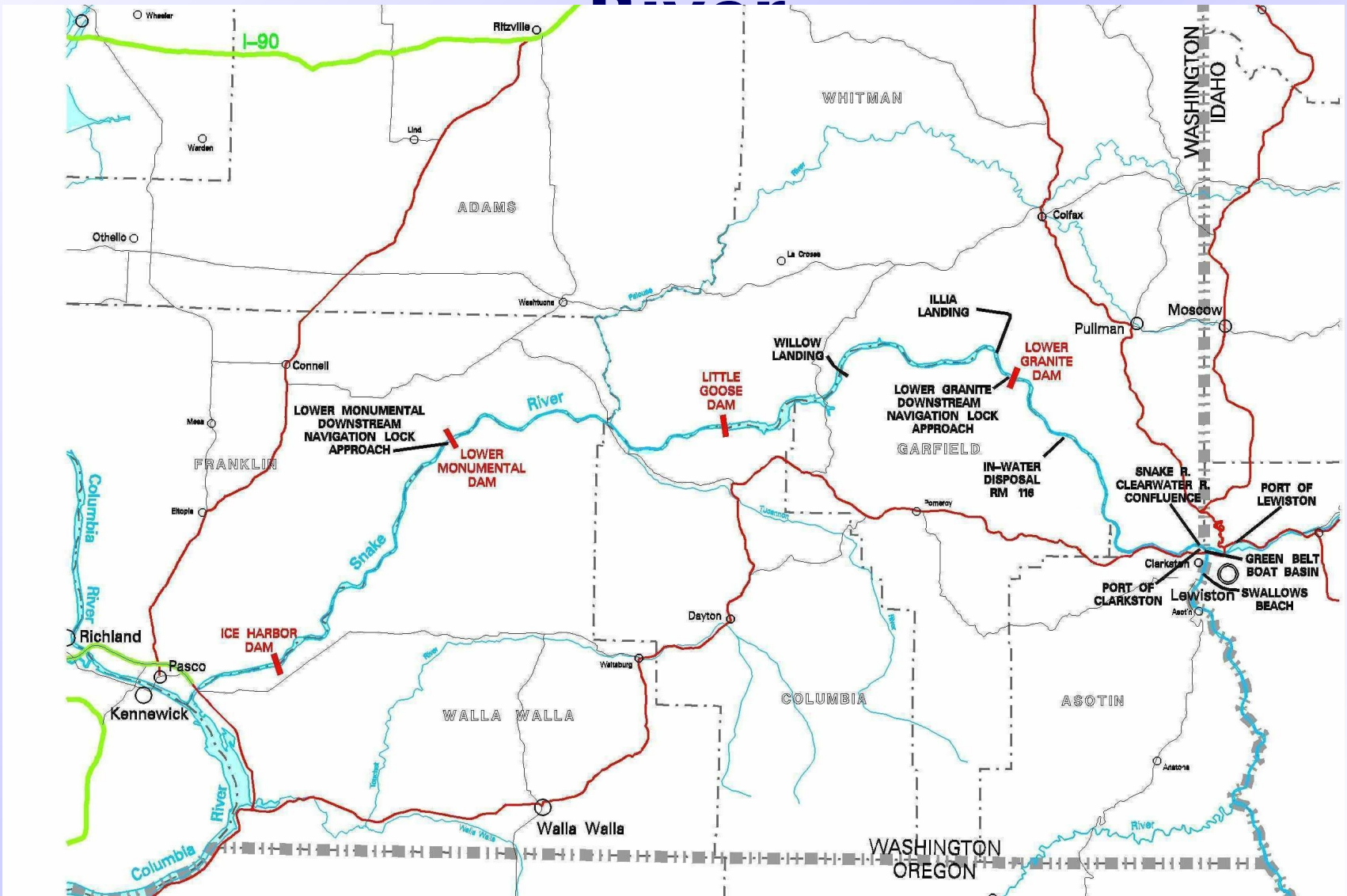

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Progression of Environmental Compliance Documentation (& Litigation)

- DMMP/EIS – July 2002, ROD Aug 2002
- Preliminary Injunction against dredging in the Snake River – Nov 27th, 2002
- Supplemental Environmental Analysis-03/04 – Jul 2003, ROCASOD Jun 2004
- Preliminary Injunction against dredging in the Snake River – Nov 1st, 2004
- Navigation Maintenance EIS – Jun 2005, ROD Jul 2005
- Settlement Agreement/case dismissed – Sep 9th, 2005

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Factors Affecting the Success of Compliance Efforts

DMMP/EIS

- Problems
  - Combination of short-term activity w/long-term plan
  - Inadequate range of alternatives
  - Inadequate NOAA Fisheries Biological Opinion
  - EO-2 rating from EPA (Environmental Objections – Insufficient Information)
- Successes
  - Adequate economics analysis

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Factors Affecting the Success of Compliance Efforts (Cont'd)

SEA-03/04

- Problems
  - Non-standard compliance documentation
  - Inadequate cumulative effects analysis
- Successes
  - Adequate evaluation of alternatives
  - Adequate NOAA Fisheries Biological Opinion

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Factors Affecting the Success of Compliance Efforts (Cont'd)

Navigation Maintenance EIS

- Problems
  - Findings still contradictory to Plaintiffs proposals
- Successes
  - Collaboration of staff from 3 District offices and 1 Division office
  - Coordination of preliminary draft w/EPA's NEPA Review Office
  - Clear focus on short-term activity
  - Standard NEPA compliance documentation
  - EC-2 rating from EPA (Environmental Concerns – Insufficient Information)
  - Resulted in Settlement Agreement

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Terms of Settlement Agreement

- COE and Plaintiffs jointly requested the Court dismiss all remaining claims related to litigation filed in 2002.
- Plaintiffs agreed not to bring any new legal action related to the Snake River dredging proposed in the 2005 EIS/ROD.
- Corps agreed to initiate & complete a NEPA analysis for a long-term plan to manage sediment (Programmatic Sediment Management Plan – PSMP) in the lower Snake River – subject to availability of appropriated funds and in accordance with proposed schedule.
- Corps agreed to limit proposing further routine maintenance dredging activities in the lower Snake River until the PSMP is completed (with some provisions).
- Defendants agreed to pay reasonable attorney's fees and costs.

Note: Other public or private entities are not precluded from pursuing their own dredging activities (i.e. Ports).

Corps is not precluded from other activities duly authorized by law, mission, or by specific congressional authorization.

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Take-Away Points

When preparing an EIS:

- include a broad range of alternatives in the analysis,
- take advantage of the broad experience base available in other District and Division offices,
- consider inviting other agencies to act as cooperating agencies,
- coordinate reviews and requested actions as early as possible with regulatory and resource agencies, and
- have the NEPA Review office of EPA review and comment on the preliminary draft EIS before releasing the draft EIS for public and agency review.

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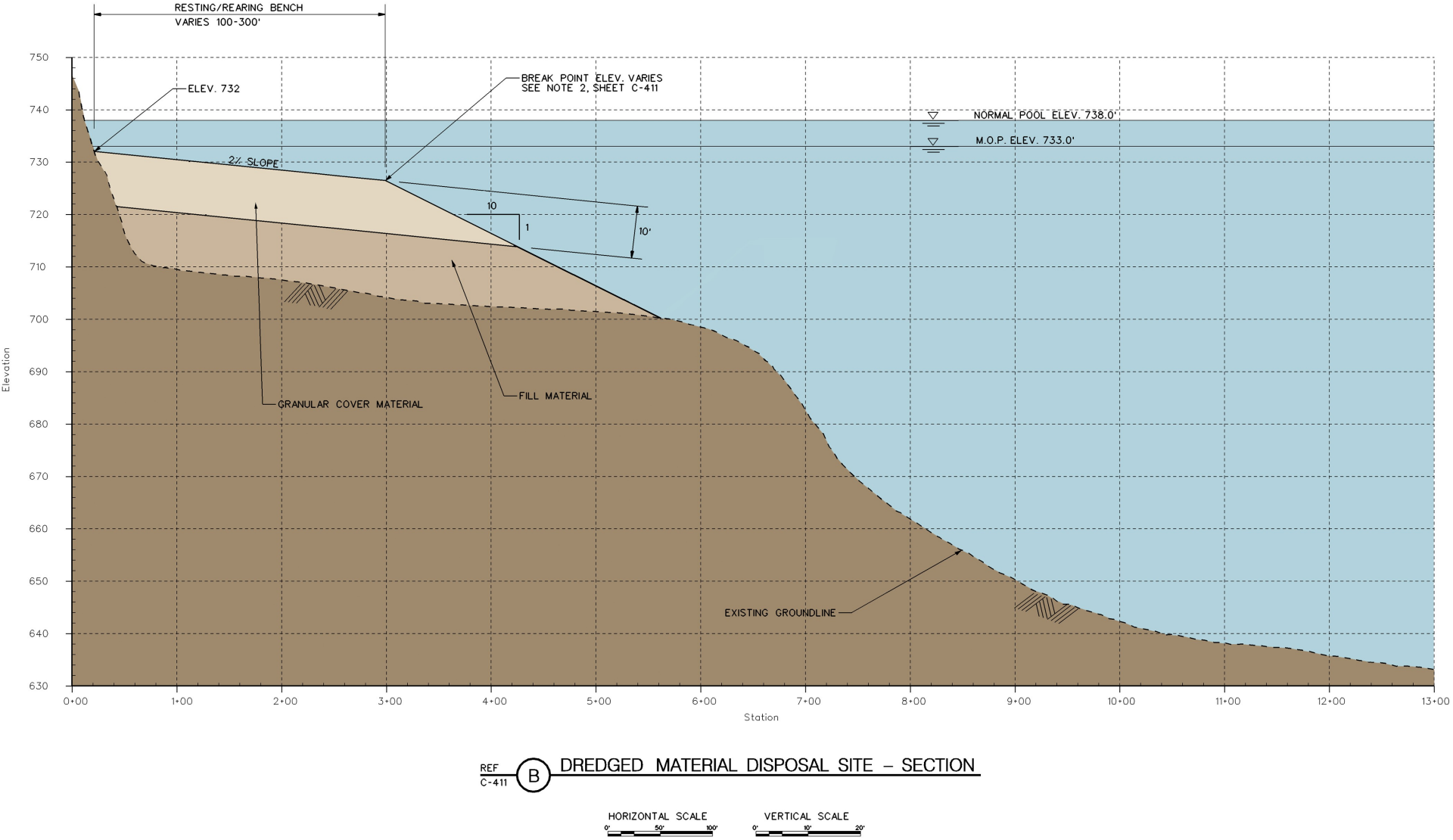

REF C-411 (B) DREDGED MATERIAL DISPOSAL SITE – SECTION

HORIZONTAL SCALE 0' 50' 100'

VERTICAL SCALE 0' 10' 20'

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